BEFORE THE ARIZONA CORPORATION COMMISSION

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Chairman
PAUL NEWMAN
Commissioner
SANDRA D. KENNEDY
Commissioner
BOB STUMP
Commissioner
BRENDA BURNS
Commissioner

IN THE MATTER OF QWEST CORPORATION'S PETITION FOR ARBITRATION AND APPROVAL OF INTERCONNECTION AGREEMENT WITH NORTH COUNTY COMMUNICATIONS CORPORATION OF ARIZONA PURSUANT TO SECTION 252(B) OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED BY THE TELECOMMUNICATIONS ACT OF 1996 AND APPLICABLE STATE LAWS.	DOCKET NOS. T-03335A-09-0383 T-01051B-09-0383 QWEST'S POST-HEARING BRIEF April 22, 2011

I. INTRODUCTION

1. Pursuant to the schedule previously established in this matter, Qwest Corporation ("Qwest"), hereby submits its post-hearing brief in this arbitration with North County Communications Corporation of Arizona ("NCC").[1]

II. BACKGROUND

2. Qwest[2] and NCC are parties to an interconnection agreement ("ICA") dated November

[1] Prior to the hearing in this matter, NCC moved to dismiss Qwest's arbitration petition on the basis that the Arizona Corporation Commission ("Commission") lacks subject matter jurisdiction to consider the petition under 47 U.S.C. §252. NCC's motion was denied by the Administrative Law Judge and then by the Commission. That matter, being fully addressed in separate filings and decisions, will not be addressed further in this brief.

[2] On April 1, 2011, Qwest's parent company, Qwest Communications International Inc., was acquired by

22, 1997. The agreement was originally arbitrated between U S WEST Communications, Inc., and MFS Intelenet. The agreement is, in Qwest's view, significantly outdated in terms of product and process descriptions, which do not match Qwest's current products and processes. Because of this, and because the terms of agreement had led to billing disputes between Qwest and NCC[3], Qwest wanted to modify and clarify other terms and conditions between the parties regarding the exchange of traffic. Thus, Qwest requested renegotiation of that ICA in 2008. At that time, more than two years ago, Qwest provided NCC with Qwest's negotiations template as a basis to start negotiations.

3. The parties negotiated for many months, and repeatedly agreed to extend the deadline by which to file for arbitration. As a result of the negotiations, and based on NCC's stated desire to retain Multi-Frequency ("MF") signaling as its method of interconnection with Qwest, Qwest modified the language in its template, and filed that modified language with its August 2009 petition for arbitration in this docket.

4. The modifications proposed by Qwest, all of which are contained in Section 7 of the ICA, allow NCC to continue to use MF signaling, while still offering Qwest a reasonable opportunity to audit and validate the bills it receives from NCC. The modifications are unique to this ICA because no other CLEC in Arizona interconnects with Qwest using only MF signaling.[4] And, while Qwest has been willing to modify the ICA in a way that addresses NCC's MF signaled trunks, NCC has not proposed any alternative language, and has not offered any language or proposals to address Qwest's right to be able to identify traffic in order to audit or verify NCC's bills, or to bill NCC for any traffic that NCC sends to Qwest.

CenturyLink, Inc., in a transaction previously approved by this Commission. The Qwest entity that is a party to this proceeding, and that provides interconnection and local telephone service, continues to exist under the Qwest name at this time.

[3] Exhibit Q-3 Albersheim Direct, page 5.

[4] Exhibit Q-4 Albersheim Rebuttal page 7.

III. GENERAL ISSUES PRESENTED FOR ARBITRATION

5. There are certain issues that are not specific to certain sections of the ICA that nevertheless bear on the outcome of these proceedings. Qwest addresses those issues here. Specific contractual issues are addressed under the separate headings below.

A. <u>Qwest's Proposed ICA Terms Do Not Discriminate Against NCC.</u>

6. The issues in this arbitration have also been raised in proceedings in Washington and Oregon in 2010. NCC has argued in those cases, and in this case, that Qwest's proposed ICA terms, and specifically the cap on minutes of use, are discriminatory. NCC claims that because Qwest has proposed different terms for NCC than for any other carrier, those terms are per se prejudicial or discriminatory.[5] Qwest disagrees. Qwest has made reasonable efforts to accommodate NCC's stated desire to interconnect with Qwest in a manner that is different from how any other CLEC interconnects with Qwest. As such, it is appropriate to have different terms and conditions that specifically address the problems raised by that method of interconnection. Those problems include an inability to track and measure local traffic that is destined for NCC's customers, making it difficult to validate NCC's bills to Qwest for reciprocal compensation, and an inability to track and measure local traffic that NCC might send to Qwest over those MF trunks. Qwest has proposed contract language to address those limitations.

7. While Qwest is unable to precisely track and determine the jurisdiction of the traffic that Qwest sends to NCC over NCC's MF trunks, Qwest was able to create a formula to "back in" to the traffic calculation. However, that is precisely why a cap on minutes is appropriate. The calculation of the cap was based on actual usage in Arizona as reported by NCC.[6] The cap is necessary because NCC's use of MF signaling prevents Qwest from

[5] Exhibit N-1, Lesser Direct, page 24.
[6] Exhibit Q-3, Albersheim Direct, pages 18-19.

being able to readily determine how much local traffic is being sent over those MF trunks – the cap sets a reasonable limit, and if NCC wishes to exceed that cap, it should be required to work with Qwest to negotiate a higher cap, after giving Qwest reasonable and verifiable assurance that the additional minutes will result in local, compensable traffic. Qwest has already agreed, in the new language in Section 7, to undertake significant manual effort to enable NCC to retain its MF trunks – manual effort that Qwest does not have to undertake with any other CLEC, because no other CLEC interconnects using only MF signaled trunks.

8. Qwest is not required to interconnect with a CLEC using outdated technology[7], and is not required to accede to every CLEC demand for what is essentially an inferior method of interconnection.[8]

9. In sum, Qwest's proposed contract language is not discriminatory, because no CLEC is similarly situated to NCC. Thus, NCC is not being treated differently from any other CLEC who obtains local interconnection using solely MF signaling, because there are no such other CLECs. Further, Qwest would readily agree to remove the cap on minutes, and agree to two-way traffic exchange, if NCC were to interconnect via SS7 signaling as all other CLECs do.

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[7] Exhibit Q-1, Linse Direct. Pages 5-9, and Exhibit Q-2, Linse Rebuttal, page 12 ("MF trunk signaling is essentially obsolete . . . .").

[8] See Exhibit Q-7, the Arbitrator's report in the Oregon proceeding discussing this issue, and the decision in *Western Radio v. Qwest*, Civ. No. 05-159-AA, Opinion and Order dated August 12, 2010. At pages 20-23 of this decision the court discusses Western Radio's desire to use certain *outdated technology* (interconnection via DTMF and dial pulse signaling) simply because it was "technically feasible." The court said that the issue was not whether a certain technology was technically feasible, but that an ILEC is not required to redesign its network with outdated technology to accommodate a requesting carrier's request, or to cater to the requesting carrier's every interconnection desire. See also, *Verizon Md. Inc. v. Core Communications, Inc.*, 631 F.Supp.2d 690, 700 (D. Md. 2009).

B. The Template Agreement Was Not Created Solely By Qwest And Is Not Solely For Qwest's Benefit.

10. NCC claims that Qwest is trying to impose an ICA that was created solely by Qwest and that operates solely for Qwest's benefit.[9] This claim is inaccurate. As the Commission is aware, Qwest's current ICA template is essentially based on the terms that were developed in the docket that addressed US WEST's Statement of Generally Available Terms and Conditions ("SGAT") filed in connection with its application for interLATA authority under Section 271 of the Telecommunications Act of 1996.[10] The terms and conditions in the template agreement reflect many provisions that are favorable to the CLECs, including terms and conditions related to the change management process and wholesale service quality.[11] In addition, the terms and conditions more accurately reflect both parties' legal rights and obligations, and reflect Qwest's current processes and products.

C. Qwest Is Not Obligated Under The Existing ICA Or Any Provision Of Law To Modify Its Systems To Provide ANI Over MF Trunks.

11. NCC argued that Qwest can and should provide automatic number identification ("ANI") over MF trunks. However, NCC has not provided any evidence or argument to show that Qwest has any legal obligation to provide ANI over MF. In fact, the 1997 ICA very clearly limits ANI to being provided over long distance, or Feature Group D trunks.[12] Additionally, Qwest has explained that ANI does not always provide sufficient information for billing purposes. ANI provides information regarding the calling party's

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[9] *Exhibit* N-1, Lesser Direct, page 24.

[10] See, Arizona Docket T-01051-B-99-0068. That docket extended over a number of years, and produced numerous orders from the Administrative Law Judge and the Commission. On multiple occasions US WEST was ordered to file terms and conditions that were consistent with those proposed by the CLECs, and which did not reflect US WEST's proposals in the proceedings. US WEST's final SGAT, with these CLEC proposed modifications, was ultimately approved by the Commission.

[11] Exhibit Q-5 – the proposed ICA; Section 20 and Exhibit K for Service Quality, and Section 12.2.6 for CMP.

[12] Exhibit Q-6 – the 1997 ICA, page 3.

billed number, but not necessarily the actual, location specific number.[13] Further, this issue was not raised as an additional issue to be resolved in the NCC's response to Qwest's petition. For these and other reasons, NCC's demands for ANI over MF trunks should be rejected.

D. <u>VNXX Is Not To Be Considered As Local Traffic.</u>

12. NCC argued that the issue of VNXX is still essentially undecided in Arizona, and that it would be inappropriate for Qwest's definition of VNXX to be adopted pending a final decision of the Commission.[14] NCC appears to oppose Qwest's language regarding VNXX, but NCC does not specify what provisions are objectionable, or why. Nor does NCC propose alternate language – rather NCC argues that the ICA need only say "VNXX will be treated in accordance with Commission rulings". However, the lack of specific terms in a contract is a recipe for future disputes. Qwest's language properly implements the requirements regarding VNXX traffic, and should be included in the ICA. VNXX is discussed below as well.

IV. SPECIFIC CONTRACTUAL ISSUES

A. <u>Multi-Frequency Signaling and SS7</u>

13. Through its proposed language, Qwest agreed to continue to interconnect with North County using MF signaling. But to enable Qwest to receive accurate bills, and verify those bills, Qwest also added language to the contract that placed certain requirements on North County's bills. Additionally, Qwest's language recognizes the present one-way flow of traffic.

14. Mr. Linse's testimony and Exhibit PL-1 explain that SS7 signaling is a digital code that is

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[13] Exhibit Q-2, Linse Rebuttal, pages 19-21

[14] Tr. 12; NCC's opening statement.

used to manage connections between telecommunications switches and call related databases. SS7 signaling is a type of signaling known as out of band signaling or Common Channel Signaling ("CCS"). This means that the path that the signaling uses to manage the trunk connections between switches is not the same trunk connection as the communication path.

15. MF or multi frequency signaling is generally an audible analog code that is used to manage connections between telecommunications switches. MF signaling is a type of signaling known as in-band trunk signaling. This means that the path that the signaling uses to manage the trunk connections between switches is also the same trunk connection as the communication or talk path. As Mr. Linse explains, SS7 signaling differs from MF signaling because it is more efficient, more reliable, and more flexible. This signaling technology is more advanced than MF signaling. It allows the carriers who use it to more accurately track traffic, and therefore more accurately bill for traffic, on the appropriate jurisdictional basis.[15]

16. Contrary to NCC's allegations, Qwest has never stated that it cannot bill from MF signaled trunks. Rather, Qwest has explained that MF signaling has limitations in its ability to record certain call information, and that in the past those limitations have been addressed by segregating traffic over MF trunks on a jurisdictional basis.[16] NCC does not want to segregate its traffic in this way, so Qwest has proposed another way of addressing the issue.

17. Furthermore, even though NCC argues to retain the existing ICA, it should be noted that the 1997 ICA requires NCC to transition to SS7 signaling.[17] Thus, the new ICA's terms

[15] Exhibit Q-1 Linse Direct, pages 4-7.
[16] Exhibit Q-2 Linse Rebuttal page 7.
[17] This provision is in Section XXXIII of the 1997 ICA, Exhibit Q-6, and discussed in Exhibit Q-4, page 10.

which allow NCC to retain MF, albeit with conditions, may be more favorable to NCC than the existing agreement that NCC wants to retain.

18. Qwest proposed to modify its language to allow North County to continue to use MF signaling, but also to address Qwest's right to receive accurate bills. Qwest's proposal to North County as filed in this arbitration can be summarized as follows:

19. In Sections 7.1.1, and 7.2.1.1, Qwest added language regarding interconnection of Qwest's and NCC's networks. These terms recognize that traffic is currently one-way from Qwest to NCC, that NCC will need to negotiate an amendment should it wish to send traffic to Qwest, and that NCC may not send traffic to Qwest through a third party. These are all reasonable terms to ensure that Qwest is able to bill NCC for any traffic it sends to Qwest, while still allowing NCC to use MF signaling for the traffic it receives from Qwest.[18]

20. Qwest also modified the language regarding billing in Section 7.8 to facilitate accurate billing when MF signaling is used. This language requires NCC to produce accurate bills for Qwest in light of the fact that Qwest is not able to verify traffic when MF signaling is used. It also clarifies that Qwest is not required to pay for minutes associated with Jointly Provided Switched Access ("JPSA"), IntraLATA LEC Toll, wireless traffic, and minutes originated by third party providers. In essence, the responsibility for the tracking and billing of traffic is given to North County, because NCC's use of MF signaling does not allow Qwest to do so.[19]

21. Qwest's language also contains a cap on the total number of minutes that will form the baseline for the calculation of compensable minutes. This cap, an average of 400,000

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[18] Exhibit Q-3 Albersheim Direct page 12.
[19] Exhibit Q-3 Albersheim Direct, page 17.

minutes per DS1, per month, is reasonable based on the number of minutes historically billed by NCC to Qwest. Qwest proposed a higher cap in Arizona, based on higher historic billings from NCC, than in other states where NCC interconnects with Qwest. It is notable that the 400,000 minutes per DS1 cap is 270% higher than the average of the Arizona CLECs interconnected with Qwest in October 2010 and 72% higher than the next highest Arizona CLEC for that same period. Qwest is willing to negotiate a different cap in Arizona based on increased traffic, provided that Qwest can somehow validate the traffic and ascertain all properly billable local traffic, excluding switched access, VNXX, and other non-compensable traffic.[20]

22. The burden is on the billing party to establish that it is billing properly, so that is NCC's responsibility. NCC's choice of MF signaling means that it cannot verify that it is fulfilling its responsibility to only bill for local minutes, and it means that Qwest is effectively prevented from verifying that information itself. Thus, the cap is a reasonable way to address this issue – it allows NCC to continue to use MF signaling for its interconnection trunks, even though no other CLEC in Arizona interconnects with Qwest using solely MF signaling[21], and it protects Qwest from being billed for traffic that it should not be billed for.

23. In fact, Qwest's proposal is very similar to the arrangement that NCC has with AT&T and Verizon today, as NCC described in response to a data request.[22] NCC explained that AT&T and Verizon tell NCC what to bill each month, and NCC prepares its bills based on that information. Qwest's proposal is similar, in that Qwest will send NCC a report each month containing the minutes that are to be excluded from NCC's bills to

[20] Id., page 18.
[21] Exhibit Q-4 Albersheim Rebuttal, page 7.
[22] Exhibit Q-4, Albersheim Rebuttal page 7, fn. 8.

Qwest.[23] Given this, and Qwest's willingness to negotiate modifications to the cap upon a showing of a higher level of compensable minutes, NCC should not be opposed to Qwest's proposal.

24. NCC raised concerns about the cap, suggesting that if the cap were applied on a per-DS1 basis, as opposed to an average per-DS1 basis, that NCC could be over the cap on one trunk and under on another, but that NCC would be denied payment. Qwest clarifies (as stated in Ms. Albersheim's Direct Testimony, Exhibit Q-3, page 20) that the cap would be applied on an average basis, so, for example, if there were four (4) DS1 trunks, and one had 900,000 minutes per month and the other three (3) had 100,000 minutes, all the traffic would still be considered as falling under the cap [900,000 + 100,000 + 100,000 + 100,000 = 1,200,000 and 1,200,000/4 = 300,000]. Qwest is willing to modify the language in Section 7.8 of the ICA to clarify this position if necessary.

25. There are two other items to note in conclusion regarding the use of MF signaling and SS7. First, Qwest's proposal is a significant compromise for Qwest. Qwest has essentially signed up for a task of manual data collection in order to accommodate NCC's desire not to update its network. An update that would be required even under the 1997 ICA. Second, it is only because all of the other CLECs are interconnected with Qwest using SS7 that Qwest can even manually track the traffic. Thus, NCC reaps a benefit from the rest of the industry having updated technology, even though NCC itself is resisting those updates.

26. Telecommunications networks are technology based and constantly evolving. Qwest's switching network has evolved from mechanical analog to completely digital and SS7 capable. Even regulation has demanded the advancement of technology in

[23] Id.

telecommunications such as Equal Access and Local Number Portability. Qwest has implemented these changes and more. When the advancement of technology is ignored, such as with NCC's insistence upon its continued use of MF trunk signaling, customers and carriers can be impacted. Customers can be adversely impacted as the result of longer call set up times. Carriers can be adversely impacted as the result of NCC's network inefficiencies and the lack of calling party information.

27. Other carriers' networks can be adversely impacted because the SS7 network is designed to accommodate the inefficiency of NCC's network. Increased trunk utilization occurs when the customers of other carriers call NCC's customers and the called party's line is busy. Unlike SS7 networks, MF networks maintain the end to end connection for the duration of the busy signal. However, when MF signaling is used in combination with SS7 trunking, the SS7 trunking becomes inefficiently used because it must accommodate the MF technology to enable call supervision and call completion. The inefficient nature of NCC's MF network is then incorporated into the other carrier's SS7 trunking network with every call to and from NCC's network.

28. MF signaling deprives carriers from validating call jurisdiction. This can lead to network arbitrage where compensation by the responsible party may be avoided.[24] Although the use of SS7 cannot eliminate this totally, it does assist with the ability to track and verify all carriers' use of the network.

B. <u>Relative Use Factor ("RUF") and VNXX</u>

29. The Relative Use Factor, or RUF, is applicable to local interconnection trunks when traffic data is available, to allow each carrier to account for its proportion of traffic, and

[24] Indeed, NCC's use of Neutral Tandem to send calls to Qwest, if done via MF signaling, could create this very issue.

adjust billing accordingly.[25] Qwest's ICA contains the standard language for the calculation of the RUF, and includes Exhibit H, which details how the RUF is calculated. NCC had not disputed the RUF language at the time that Qwest filed the petition for arbitration in August 2009, but a dispute about that language was subsequently raised by NCC in its rebuttal testimony. Qwest addresses that issue here, including the issue of VNXX traffic in the calculation of the RUF.

1. The terms for calculating the RUF

30. Exhibit H to Qwest's proposed ICA details how the RUF is calculated. The starting point for assignment of facility costs for both the entrance facility and any direct trunked transport is a 50/50 sharing of the costs between both parties when the interconnecting companies have not exchanged LIS traffic previously.[26] This initial assignment is valid for 3 months, and then the parties may seek recalculation based on the actual relative use. These terms have been agreed upon between Qwest and at least 48 other CLECs, and are in effect in that same number of interconnection agreements that are on file with and approved by the Commission.[27] During subsequent negotiations, Qwest proposed a more favorable sharing to NCC in that it assigns only 1% of the cost to NCC and 99% to Qwest, so long as the two parties file billing percentages in NECA 4 that give Qwest 100% ownership of the transport facilities.[28] However, no agreement was reached during these negotiations.

31. VNXX traffic, discussed below, is assigned to the terminating carrier, not the originating carrier.

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[25] Q/1 Albersheim Direct page 19.
[26] Q/1 Albersheim Direct page 19.
[27] Exhibit Q-3 Albersheim Direct page 23.
[28] Proposed ICA, Section 7.3.1.1.3.1, and Section 7.3.2.2.1. The specific 1%/99% RUF language is not in the ICA filed with Qwest's petition for arbitration, as that offer was made to NCC after the filing.

2. The assignment of traffic types when calculating the RUF, including VNXX traffic.

32. Virtual NXX is "all traffic originated by a Party's End User Customer and dialed with a local dialing pattern that is not terminated to the other Party's End User Customer physically located within the same Qwest Local Calling Area (as approved by the state Commission) as the originating caller, regardless of the NPA-NXX dialed. VNXX does not include originating 8XX traffic." North County has agreed that local traffic is defined in accordance with Qwest's local calling areas.[29]

33. North County raised concerns in subsequent negotiations regarding the attribution of VNXX traffic to the terminating carrier in the calculation of the RUF. At the time that Qwest filed for arbitration of this agreement, the parties had not exchanged language regarding VNXX beyond what was filed by Qwest in section 7.8 and Exhibit H regarding the treatment of VNXX traffic from Qwest's bills. The parties continued negotiations after Qwest filed for arbitration, but there has still been no agreement on language regarding the VNXX traffic. Standard language referencing VNXX is contained in paragraphs 7.3.2.2.1 and 7.3.1.1.3.1 regarding the RUF.

34. In addition to the standard language, Qwest added language in the new Section 7.8 to exclude VNXX traffic from North County's bills to Qwest. This is consistent with the Commission's decision in the Level 3 arbitration. In the Level 3 Arbitration, the Commission determined that VNXX would not be permitted, and that the parties could negotiate an "FX-Like" alternative to VNXX in the interim until the Commission completes an investigation into VNXX. Relevant language from the Level 3 order is set forth below:

> IT IS FURTHER ORDERED that Qwest shall work with Level 3 to implement within thirty (30) days of the effective date of this Decision an interim

[29] Section III.SS – page 7 of 1997 ICA, Exhibit Q-6.

> replacement for VNXX which we shall refer to as FX-like traffic. **Such ISP-bound and VoIP FX-like traffic shall be routed over a direct end office trunk between Level 3's network and the Qwest end office serving the local calling area of the originating Qwest end user. The direct end office trunk shall be established and paid for by Level 3 under the terms of this Agreement.**
>
> IT IS FURTHER ORDERED that intercarrier compensation for FX-like traffic exchanged between Level 3 and Qwest during the interim period shall be set at $0.0007 per MOU consistent with the rate for ISP-bound traffic established by the FCC.
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> IT IS FURTHER ORDERED that, within sixty (60) days of the effective date of this Decision, Level 3 shall cease using VNXX.
>
> IT IS FURTHER ORDERED that the interim use of FX-like traffic shall be allowed to continue until such time as the Commission issues a Decision resolving the issues concerning the use of VNXX.

35. The Commission further ordered that VNXX traffic be exchanged on a bill and keep basis until the parties implement an interim replacement for VNXX known as FX-Like Traffic.[30]

36. The Commission's language does not permit the use of VNXX over LIS trunks but rather requires the establishment of direct end office trunks for the exchange of what it calls FX-like traffic.[31] The Commission's order allows the CLEC to offer an equivalent to Qwest's FX product offering, thus doing away with North County's objection to Qwest's FX product. Remote Call Forwarding is not equivalent to VNXX or to FX because access charges and toll charges are not avoided with this product. Qwest's product documentation clearly states that access charges will apply to calls forwarded to a number outside the local calling area, and that subscribers will pay applicable toll

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[30] *See In the Matter of the Petition of Level 3 Communications LLC for Arbitration of an Interconnection Agreement with Qwest Corporation pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. T-03654A-05-0350, T-01051B-05-0350, Decision Nos. 68817, and 69176, June 29 and December 5, 2006, at pages 57, and 5-6. (Emphasis added).

[31] NCC interconnects at Qwest's tandem switches (Tr. 153), not the end offices, so this is not an option for NCC, nor did NCC request this arrangement.

charges.[32]

37. Qwest's proposed language does not expressly prohibit VNXX on North County's LIS trunks, however it does treat VNXX traffic in a manner consistent with the Commission's order above. North County will not be compensated for any terminating VNXX traffic under the RUF calculations described in Qwest's proposed Exhibit H to the Interconnection agreement.

38. During the hearing NCC confirmed its earlier testimony that it does not have any VNXX traffic in Arizona, and further that it does not have any ISP customers (a common type of traffic that uses VNXX routing).[33] As such, NCC's disagreement with Qwest's proposal is largely if not wholly hypothetical. However, Qwest's interest in having language in an ICA that reflects the Commission's rulings is real – ICAs can be adopted by other carriers, some of whom may want to use VNXX dialing and routing patterns. If the language in this ICA is not consistent with current rulings, Qwest is vulnerable to improper routing. And, if the ICA is silent on this issue, the matter will simply come back to the Commission for resolution. This would not be a good use of resources when in fact the issue can be decided now.

C. Multiplexing

39. The issue of multiplexing was raised by NCC in the disputed issues matrix, but was not an issue that was negotiated by the parties. Further, NCC did not raise this issue in its answer to the arbitration petition. NCC did not propose alternative language, and did not advance any legal or factual support for opposing Qwest's proposed language on multiplexing. Qwest's standard language has been adopted in dozens of agreements, and references multiplexing rates in Exhibit A, which contains Commission-approved rates.

[32] Exhibit Q-3 Albersheim Direct, page 26.
[33] Tr. 159.

40. NCC is responsible for multiplexing charges under the existing (expired) ICA.[34] No other carrier has been granted an exemption from paying Qwest multiplexing charges such as the one NCC is seeking in this contract. Multiplexing is only established and the cost is only charged if the CLEC has requested multiplexing.[35] NCC's use of DS3 interconnection saves it money as compared to DS1 interconnection[36], but multiplexing is required in this circumstance.

41. In effect, NCC is asking to receive multiplexing from Qwest for free. This is contrary to the requirement in the Telecom Act that permits Qwest to recover its costs for facilities provided to CLECs. Further, NCC pays less for a DS3 facility than it would for the equivalent number (24) of DS1s if ordered separately. If NCC needs multiplexing based on its particular business needs, and requests multiplexing from Qwest, there is no rationale under which NCC can avoid paying for the multiplexing facilities and functions.

D. <u>Trunk Non-Recurring Charges</u>

42. The issue of non-recurring charges for LIS trunks was raised by NCC in the disputed issues matrix, but was not an issue that was negotiated by the parties. Further, NCC did not raise this issue in its answer to the arbitration petition. NCC did not propose alternative language, and did not advance any legal or factual support for opposing Qwest's proposed language on trunk non-recurring charges. Qwest's standard language has been adopted in dozens of agreements, and references non-recurring rates in Exhibit A, which contains Commission-approved rates.

43. NCC has paid these non-recurring charges under the existing (expired) ICA. No other

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[34] Exhibit Q-6 at page 76 provides the rates for DS3 –DS1 multiplexing for interconnection. Contrary to NCC's arguments during the hearing, multiplexing rates are not limited to purchases of unbundled network elements, but by the terms of the ICA they apply to interconnection as well.

[35] Multiplexing rates were approved in the cost docket, T-00000A-00-0194, Phase II Order No. 64922, effective June 12, 2002.

[36] Tr. 200:7-9.

carrier has been granted an exemption from paying Qwest's non-recurring charges such as the one NCC is seeking in this contract. Trunks are only set up at the request of the CLEC, and the cost is only charged if the CLEC has requested additional trunks. As with multiplexing, there is no rationale under which it is appropriate for NCC to refuse to pay those non-recurring charges.

E. <u>Third Party Transit</u>

44. NCC asserts that it should be able to interconnect with Qwest via a third party tandem provider. Qwest's language disallows such interconnection until a separate amendment is negotiated. However, such a provision exists in the current (expired) ICA as well:

> Absent a separately negotiated agreement to the contrary, the Parties will directly exchange traffic between their respective networks, without the use of third party transit providers.[37]

45. NCC argued that this language did not preclude third party interconnection, but a plain reading of the language requires a separately negotiated amendment between the parties, not, as NCC argued, between NCC and the third party.

46. An amendment is necessary to address issues raised by the use of a third party transit provider that are not covered in the terms and conditions of the proposed interconnection agreement.[38] Some of the issues include:

- What agreements or amendments between Qwest and the third party should also exist
- How the CLEC should appropriately notify the industry of such an arrangement
- How the transit arrangement will affect Qwest's obligation to route other service provider's traffic to the CLEC

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[37] Exhibit Q-6, page 8, Section (V).A.
[38] Exhibit Q-3, pages 31-32.

- What compensation arrangements will be agreed upon
- The conditions for the exchange of records between the parties
- What minimum signaling information should be required
- What type of traffic may be restricted from being routed through a third party

47. None of these issues have been discussed or negotiated. Therefore, the parties should be allowed to negotiate an amendment to address these issues and any other concerns that NCC or Qwest may have associated with the use of a third party transit provider. Because these issues were not raised in the original negotiations between the parties, it is not appropriate to decide them in this case.

F. <u>CNAM Database Information</u>

48. Finally, NCC argues that the ICA should include language that requires Qwest to purchase CNAM (Calling Name) information from NCC. There are multiple reasons why that should not be ordered in this proceeding, or in any other. First, the issue should not be decided in this case because it was not properly raised as a disputed issue by NCC in either its answer to the arbitration petition or in the disputed issues list.

49. Further, even if the Commission were to overlook that failure, NCC cannot point to any legal obligation that Qwest has to purchase CNAM information from a CLEC. All of the requirements for interconnection, including access to unbundled network elements and databases, are contained in 47 C.F.R. 51. Nowhere in any of the subparts is there a requirement on the ILEC regarding purchasing of database information. The database requirements (and there are multiple references to databases in this section) pertain only to the provision of such information by ILECs to CLECs.

50. The relief NCC seeks is also not authorized under Arizona rules. NCC cited R14-2-1306 in support of its position, but that regulation, similar to the federal regulations, only requires LECs to provide access to databases. It does not obligate Qwest, or any other

carrier, to purchase database services.

51. Further, even if Qwest were to want to separately negotiate a CNAM agreement with NCC, it is clear that CNAM is a service that is available only with SS7 signaling.[39] Though NCC does have SS7 links in some areas, it does not in Arizona. And, based on its position in this proceeding, NCC does not appear willing to convert to SS7. Nor has NCC proposed any pricing, or any terms and conditions relative to CNAM, so the issue has not been fully litigated in this proceeding.

V. CONCLUSION

52. In conclusion, Qwest respectfully asks the Commission to order the form of the ICA proposed by Qwest in this matter, and to decide the disputed issues in favor of Qwest's position, as the Commissions in Washington and Oregon have done.

53. Qwest has made reasonable efforts to accommodate North County's desire to continue using MF signaling instead of the industry standard SS7 Signaling. The language Qwest has proposed in this arbitration strikes a balance by allowing North County to continue using MF signaling, but because different types of traffic cannot be accurately tracked by Qwest if MF signaling is used, it also protects Qwest's right by spelling out the requirements that North County must fulfill when it submits bills to Qwest for terminating traffic.

[39] Exhibit Q-2, page 26.

DATED this 22nd day of April, 2011.

QWEST CORPORATION

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